

NOT TO BE PUBLISHED

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

----

In re L.N., a Person Coming Under the Juvenile Court  
Law.

C085644

SACRAMENTO COUNTY DEPARTMENT OF  
CHILD, FAMILY, AND ADULT SERVICES,

(Super. Ct. No. JD236414)

Plaintiff and Respondent,

v.

I.N. et al.,

Defendants and Appellants.

F.N. (father) and I.N. (mother), parents of the minor L.N., appeal from the juvenile court's order continuing the minor in out-of-home placement. The parents contend there was insufficient evidence to support the court's finding of detriment pursuant to Welfare

and Institutions Code sections 366.21, subdivision (f), or 366.22, subdivision (a).<sup>1</sup> We affirm the juvenile court's order.

## **I. BACKGROUND**

The minor (born September 2005) had five siblings ranging in age from three to 11 years old at the time of the initial petition, none of whom are subjects of this appeal. The children came to the attention of the Sacramento County Department of Child, Family, and Adult Services (Department), Children's Protective Services (CPS), on September 18, 2015, due to an incident of domestic violence, but later the petition was amended to also allege sexual abuse by father against the minor.

Social workers interviewed the five oldest children and the maternal aunt during their initial investigation and learned father had, on numerous occasions, engaged in domestic violence against mother in the presence of the children, including pulling mother's hair, shoving her, slamming her head onto the ground, sitting on her stomach and hitting her on the chest with closed fists, spitting in her face, smearing ketchup on her face, tearing her clothes off of her body, isolating her, and controlling the money, who she associated with, and how she dressed. Father also routinely engaged in corporal punishment and physical abuse of the children, including hitting them, slapping them in the face, pulling their ears, and hurting their palms and the bottom of their feet to avoid detection.

Social workers also interviewed mother, who confirmed years of emotional, verbal, physical, and sexual abuse by father. Mother also reported that, in 2009 when the family lived in Missouri and mother was pregnant, father grabbed her by the neck, strangled her, and then slammed her head into the wall, requiring that mother receive treatment at the emergency room. Father was arrested for the 2009 incident. Mother

---

<sup>1</sup> Further unspecified statutory references are to the Welfare and Institutions Code.

stated that father later forced her to write and sign a letter stating he did not cause injuries to her or the children.

### ***Original Dependency Petition***

On September 24, 2015, the Department filed a dependency petition alleging the minor came within the provisions of section 300, subdivisions (a) and (b), due to father's excessive use of corporal punishment of the minor and her siblings, the parents' lengthy history of domestic violence in the home, and father's untreated anger management issues. The petition also alleged substantiated prior referrals for physical abuse by father from the State of Missouri.

At the detention hearing on September 29, 2015, the juvenile court ordered that the minor and her siblings be detained from father but remain home with mother so long as father stayed away from the home. The court ordered reunification services to both parents and supervised visitation between father and the children.

According to the jurisdiction/disposition report, the social worker interviewed both parents and all six of the children, including the minor. Mother confirmed the truth of the allegations in the dependency petition, including physical and emotional abuse by father of her and the children.

Father denied the allegations in the petition claiming he was “ ‘a hundred percent against corporal punishment’ ” and used only limited physical discipline on the children. He also denied the children ever saw him do anything inappropriate to mother and denied physical violence against her.

Regarding the September 18, 2015, incident, father denied any violence and claimed the incident was mother's fault. He reported he cooperated fully with CPS but he did not believe he had done anything wrong and did not believe he needed parenting classes, as mother's mental health was the main concern.

Each of the children corroborated mother's account of domestic violence, corporal punishment, and physical and psychological abuse at the hands of their father in detail.

The minor described life with father as being “scared all the time” because he would hit her and her siblings and keep them with him in his bedroom when mother went to run errands. Father would watch television but not allow the children to do so. He would not let the children use the bathroom when mother was not home. The minor stated that if she had to go to the bathroom, she would “ha[ve] to pee on [her]self.” Father would also deny the children food when they asked for it and, when he did allow them to eat, he gave them “ ‘five minutes to eat’ ” and did not allow them to finish their food.

The minor described father as “abusive,” stating he pulled and twisted the children’s hair and pulled it out when they “ ‘did something wrong on accident,’ ” he spanked the children, and he left marks on their faces from slapping them. The minor stated she had “ ‘big bruises’ ” from father spanking her “ ‘with a belt, a hanger, a stick he uses for his back pain, and anything he would find.’ ” The minor stated she never wanted to see father and was “scared of him.” She also reported father argued with mother frequently, hit her with his hands, cussed at and called her names such as “prostitute,” and told mother she was going to lose the children. He “ ‘mixed all sauces and rubbed them on [mother’s] face.’ ”

The minor reported that, when she showered, father “ ‘would come in and look at me.’ ” Father told her, “ ‘because you’re a bigger girl I’m allowed to look.’ ” The minor reported she felt embarrassed when father watched her showering, noting father would not leave when she asked him to and instead told her it was “ ‘okay.’ ” When the minor told mother what was happening, mother told father not to go in the bathroom, but father “ ‘never stopped and kept looking.’ ” When the minor did not get out of the shower fast enough, father “ ‘grabbed a belt or hanger and hit’ ” her as he laughed. She stated that when she went to use the toilet, father would come into the bathroom and wash his face. The minor remained seated on the toilet, so father would not see her naked. Father reportedly “always had a smirk on his face.”

### ***Amended Dependency Petition***

On January 11, 2016, the dependency petition was amended to allege sexual abuse of the minor by father. The amended petition alleged the minor had been sexually abused by father since she was approximately eight years old, and that the lewd and lascivious acts included bathing with the minor and soaping her entire body including her vaginal area, watching her put on her bra and underwear after showering, not giving her privacy while she dressed, wiping her front and back after she used the toilet, and touching her vaginal area in the shower countless times.

The addendum report filed January 11, 2016, provided, among other things, information regarding the sexual abuse allegations as set forth in the amended petition. The report noted the minor refused to attend visits with father and had told the social worker that things were better when father was not living with them because it “ ‘doesn’t feel scary,’ ” and there were no “ ‘bad things’ ” or things that “ ‘feel uncomfortable.’ ” The social worker reported that her older sibling, now 12-year-old Ar.N., knew father “ ‘touched [the minor]’ ” and was present in the bathroom when father was going to wash the minor. When Ar.N. told him not to, father told Ar.N. to “ ‘shut up or I am going to spank your butt so hard.’ ”

The January 2016 addendum report stated mother wanted to be with father and asked the social worker for services and to allow her and the children to return to father’s home. Mother claimed she had exaggerated in her prior statements. Mother admitted both she and father used physical discipline, but indicated it was never as severe as previously reported. She stated she made father angry and was partially at fault for what occurred in her home. She claimed her sisters lied about the domestic violence and coerced her to lie as well, and had also lied about the domestic violence reported in Missouri.

Mother did not believe father touched the minor in the shower or would ever touch the minor. She claimed she had spoken with the minor about the sexual abuse allegations and the minor informed her that father never touched her.

The Department noted its concerns regarding mother's ability to protect the children given the extensive history of domestic violence between the parents and father's continued contact with and influence over mother despite separate residences, an existing restraining order, and court involvement. It was noted that, while the parents were participating in services, those services had not been effective as evidenced by the fact that mother recanted her previous statements to social workers regarding domestic violence and physical abuse by father, mother's disbelief of the minor's claims of sexual abuse by father, mother's minimization of father's violence towards her and the children, father's continued denial of physical and sexual abuse and domestic violence in spite of existing evidence, and mother's desire to return with the children to father's home. The Department concluded the children would be at risk of abuse and/or neglect if left in the care of the parents and recommended out-of-home placement and reunification services for both parents to address domestic violence, sexual abuse, physical abuse, and neglect.

At the January 22, 2016, contested jurisdiction hearing, the juvenile court sustained the allegations in the amended petition, adjudged the children dependents of the court, and ordered the minor and her siblings removed from the parents' care and custody, with no visits between the minor and father until approved by the minor's therapist. The court further ordered that reunification services be provided to both parents.

The prepermanency review report filed June 24, 2016, reported that mother completed parenting education and had benefitted from the classes. Mother also completed the domestic violence program but had not benefitted from the program as evidenced by her continued denial of the domestic violence events that led to the juvenile court's involvement.

Father completed general counseling and was reportedly actively engaged and accepting of the course information after initially being guarded and defensive. He was also reportedly becoming aware of some of his inappropriate behaviors. Father did not benefit from the domestic violence program due to his inability to take accountability for any domestic violence having occurred in the home. Staff noted it was apparent father was “ ‘not there to learn but find vindication for his perspective and to bolster his self-image.’ ” The social worker provided father with a new referral for domestic violence services, but father did not engage in those services.

Visits between father and the children were initially reported to be challenging because some of the children refused to attend. For example, the minor and several of the other children hid in the closet to avoid visiting father. It was noted that father had not taken responsibility for his actions and continued to vehemently deny the substantiated allegations that led to removal as well as the allegations in the amended petition.

Mother’s visits were observed because there had not been enough evidence to support her ability to protect the children from father if unsupervised visits were to occur. On April 9, 2016, mother was speaking Romanian with the minor, who appeared to get upset and began to cry. The visitation coordinator had concerns the family was attempting to coerce the minor into having contact with father. Later that day, the minor reported that mother promised to buy the minor an electronic tablet if she agreed to visit with father.

The Department concluded there continued to be a high risk if the children were returned home based on the parents’ refusal to acknowledge the domestic violence between them and father’s continued denial of the substantiated sexual abuse involving the minor and the substantiated physical abuse regarding the children. The Department noted its concern that, similar to the parents’ CPS involvement in Missouri, mother recanted her story to CPS in the form of a letter due to manipulation and exertion of power and control by father. Mother claimed she lied in the initial reports because she

was “ ‘tricked by her family members’ ” and she was now adamant that she would “ ‘tell the truth’ ” if she could go back and do it again. The Department was also concerned that, despite completing domestic violence classes, mother continued to deny that domestic violence occurred in the home and father continued to deny any physical or sexual abuse or domestic violence occurred. Concluding each parent’s progress in their case plan had only been “fair,” the Department recommended continued out-of-home placement of the children with continued services provided to the parents.

In a July 19, 2016, memorandum, the Department informed the court that the minor requested an end to visitation with father. The minor’s therapist stated that, because the minor had refused to engage in conjoint therapy with father, the therapist was not inclined to force the minor to participate in conjoint counseling with father until the minor stated she was ready, noting, “[I]t is against ethical standards to force a victim to engage in counseling session[s] with their perpetrator.” The Department also reported that the parents continued to demonstrate they had not benefited from services, as evidenced by the parents’ denial of all allegations and lack of accountability. The Department requested the court to order both parents to complete a psychological examination, noting the parents “vehemently deny there was any domestic violence, physical abuse, or sexual abuse,” thus hindering their progress in services.

The contested six-month review hearing (§ 366.21, subd. (e)) commenced on August 2, 2016. Although the minor’s siblings told the court through their lawyer that they wanted to go back with their parents, the minor did not want to return home. The court adopted the proposed findings and orders in the prepermanency report and ordered continued out-of-home placement.

The court also ordered six additional months of services for the parents and lifted the no-contact order between the minor and father subject to the minor’s right to refuse visitation, the requirement that any visitation occur in a therapeutic setting, and input

from the minor's therapist regarding whether the minor was ready to engage in such visitation.

According to an addendum report filed December 13, 2016, the minor continued to decline visitation with father.

In the December 2016 permanency report, the Department recommended termination of services to both parents and requested the court set a hearing pursuant to section 366.26 as to all the children including the minor. The minor was reportedly referred to therapeutic behavioral services for additional support as she was exhibiting new troubling behaviors such as stealing and "having mental health breakdowns such as screaming in the bathroom to voices."

It was reported that mother completed her domestic violence program and sexual abuse counseling for nonoffending parents.

Father met weekly with his therapist for individual counseling. The therapist reported father was open and willing to meet and discuss his progress in services and to work on his challenges with parenting and his relationship with mother. Father told the therapist that mother's family reported false accusations to the court. He also denied any sexual abuse of the minor, claiming he mistakenly walked into the bathroom when the minor was using the toilet and he tried to help her in the shower because he thought she was in danger.

Father's domestic violence counselor reported father had benefited from services in that father had openly admitted to domestic violence against mother and "was open about his cultural differences." The counselor reported father continued to deny that he was ever overly abusive towards his children and that he learned parenting skills from his own parents in Romania where corporal punishment was still acceptable. Father reportedly denied ever having anger management issues and asserted that most of the domestic violence allegations were initiated by mother's family. Father also denied his children's claims of domestic violence claiming the children were influenced by mother's

family, a claim the counselor found concerning given that more than one child accused father of being physically and verbally abusive.

Father reportedly attended sexual abuse counseling services, participating in three individual sessions and six group sessions. His prognosis was reported to be “fair to good,” although he continued to deny sexually molesting the minor and claimed he entered the bathroom while the minor was using the toilet to wash out his eyes and entered the shower because he thought the minor was in danger. Father reportedly completed the homework assignments and actively participated in group and individual sessions, and claimed he was sharing the information he learned with mother.

The report stated the minor was visiting twice weekly with mother. Visits between the minor and mother were reportedly going well, and the minor appeared to feel safe. The minor continued to refuse visits with father. The Department expressed concern regarding mother’s continued denial of the sexual abuse allegations against father and reported she did not see the abuse and could not confirm that it occurred. Father continued to minimize and deny the sexual abuse and was reportedly “embarrassed” by his actions in the bathroom with the minor, claiming his actions were not considered “sexual abuse” in his culture. Father specifically denied bathing the minor, soaping her entire body including her vaginal area, not giving her privacy when she dressed, wiping her front and back after she used the toilet, and touching her vaginal area. He initially denied watching the minor putting on her bra and underwear after she showered, but later he admitted he was checking to see if the minor’s new bra fit correctly because mother asked him for his advice on the fit of the bra. Father claimed he only walked into the bathroom to use the sink when the minor was using the toilet because his eyes were itching from his medication. He also claimed he checked on the minor in the shower because she was yelling and he thought she might have drowned. Father stated he did not think these incidents were a problem because in his culture they

would not have been viewed as an issue, but that he now realized these behaviors were not appropriate in America, where he had lived for the past 27 years.

According to the June 2017 addendum report, the minor continued to refuse visitation with father. However, it was reported that, during a supervised telephone call between the minor and mother, the minor told mother to “ ‘tell the social worker I’ll do whatever I can to come home, I miss my family, dad too.’ ” When the social worker asked the minor about the statement and if the minor would like to visit father, the minor immediately stopped communication and would not answer the question.

***Contested Permanency Hearing (§ 366.21, subd. (f))***

The contested permanency hearing (§ 366.21, subd. (f)) commenced on June 7, 2017, and continued for several days. The Department argued that while the parents both participated in reunification services, neither had made substantive progress or growth such that the risks of returning the children to their care had been alleviated. The minor’s counsel informed the court that the minor had consistently “balked” at the suggestion of returning to father’s care but had expressed a desire to return to the care of mother. However, given that both parents lived together, were “legally aligned” in the case, and continued to deny the allegations in the petition, counsel requested that the court follow the Department’s recommendation to terminate reunification services and set the matter for a permanency hearing pursuant to section 366.26. Both parents requested that all of the children be returned to their care.

The court heard testimony from multiple witnesses. We recite only those portions of testimony that are relevant to our review.

Social worker Catherine Bryant testified the parents had participated and completed all services in their respective case plans, but the Department was unable to determine if the parents had benefited from those services. Bryant pointed to mother’s continued denial of the allegations of domestic violence, sexual abuse, and physical abuse despite her initial acknowledgment thereof. She expressed a concern that mother would

be unable to protect the children from further domestic violence, sexual abuse, and physical abuse due to her change in position. Bryant testified mother denied domestic violence in the current case and claimed the prior domestic violence allegations in Missouri were made by her family members. Father also denied domestic violence and denied any physical punishment of the children after 2011.

Regarding the allegation of sexual abuse against the minor, Bryant testified that father reported walking into the bathroom while the minor was using the toilet so he could wash his eyes, and going into the bathroom while the minor was showering out of concern for the minor. Bryant testified that, while the parents had been involved in services continually since removal of the children, she was not aware of any service that would make a difference in the parents' acknowledgment of the allegations. She testified that conjoint counseling was not in the minor's case plan because the minor continued to refuse to be in father's presence without elaborating as to why.

Bryant stated that she had recently received an e-mail from the parents stating that the minor had expressed a desire to visit with father. The visitation supervisor confirmed that the minor "missed her dad" and had told mother "she'll do whatever she needs to do to be able to come home and to make sure she tells the social worker." Bryant met with the minor and asked if she wanted to have a visit with father. The minor looked down and would not respond and did not indicate a desire to visit father. Because the minor's therapist indicated she was not comfortable supervising a visit in a therapeutic environment, Bryant determined it would be necessary to identify a third party to do so. Bryant did not, however, feel father's therapist, Elkins, would be an appropriate person to provide a therapeutic visit. She noted that Elkins wanted to speak with the minor's therapist, Michelle Pettingill, about potential conjoint counseling between the minor and father. However, Pettingill declined to speak with father's therapist or set up conjoint counseling as the minor had not expressed a desire to see her father face-to-face. Bryant also noted the minor's prior therapist, Amy Smith, also declined to arrange conjoint

counseling between the minor and father because the minor refused it and Smith felt it was not appropriate to force the minor to engage in conjoint counseling at the time.

Bryant observed the minor exhibiting behaviors of someone who was the victim of sexual abuse, such as shutting down when asked about allegations of sexual abuse, bedwetting, and urinating on herself. It was also reported that the minor was rubbing an action figure against her genitals.

Ted Brown, director of an organization that provided anger management and domestic violence classes, testified regarding the sustained allegations of sexual abuse against the minor that sexual abuse of children was neither a topic of discussion in class nor a part of his class curriculum. Brown testified he was aware that the court sustained the sexual abuse allegations against father, but noted that father claimed those allegations were fabricated by the maternal aunt and the maternal grandmother and “never happened.” Brown conceded that he would be concerned if a client denied sexual abuse allegations that had been found true by a court. Brown further conceded that his final assessment of whether father benefited from services would have been impacted by father’s denial of allegations found to be true because it “would mean that [father] was in denial about the actual incident and that he was not being straightforward.” In that case, “The final assessment would say that the client was dishonest or in denial about the allegations that were made against him.” However, Brown did not believe father was in denial about the physical abuse or domestic violence, and felt it was not his place to determine the truth of the sexual abuse allegations.

Tice Elkins, a mental health counselor, clinical social worker, and marriage and family therapist, testified father had been his client for approximately one year. Elkins and father discussed the allegations of sexual abuse. Father acknowledged there were times when he acted inappropriately towards the minor, such as being involved with the minor’s fitting of a bra, going into the bathroom without the minor’s permission while she was using the toilet to help her wipe herself, and going into the bathroom without

permission while the minor was in the shower due to “extreme behavior” on the minor’s part. However, father did not acknowledge inappropriate sexual touching or touching the minor’s vaginal area in the shower. It was Elkins’ understanding, based on information from the parents, that the minor was dealing with mental health issues that were described at times as “psychotic,” such as hallucinations and delusions, and mother asked father to intervene when the minor was in the shower because mother was reluctant to do so.

Father believed he had been falsely accused of the actions that brought him before the court, including the allegation of sexual abuse. Elkins acknowledged that father washing and touching the minor’s private areas while the two of them were alone in the bathroom was clearly sexual, but questioned whether the incident actually occurred. He did not consider any of the facts and circumstances, as provided to him by the parents, to constitute sexual abuse, and he had no concerns regarding contact between father and the children. Elkins conceded, however, that the minor would be at risk if the sexual abuse allegations were true. In that case, father would require individual counseling or therapy to specifically address sexual abuse and would need someone with years of expertise in the area of child sexual abuse.

Mother testified she participated in services including sexual abuse class, where she learned that she needed to protect the children’s privacy and space. She learned to look for “red flags” or warning signs such as the children’s body language, dress, and other behaviors. Mother stated that if she saw those signs, she would have a conversation with the child. If one of the children said their father touched them inappropriately, mother would look into it and talk with father about it. However, she denied father ever touched the minor inappropriately, noting she did not see any signs and had no reason to believe the allegations.

Mother claimed she spoke with the minor on several occasions, but she never heard the minor state she did not want to visit with father and she never saw the minor

exhibit any behavior suggesting the minor was afraid of father. She believed the reason the minor was resistant to return home to father was because father was religiously strict and might not allow the minor to wear certain clothes, go to the movies, or do other things she was allowed to do while in out-of-home placement.

With regard to incidents that occurred when the family lived in Missouri, mother testified her family members coerced her into accusing father of violence when she was pregnant. Mother also testified that, other than spanking, she never witnessed any physical abuse by father against the children.

Father testified he completed group and individual counseling and classes for parenting, anger management, domestic violence, and sexual abuse. He acknowledged some violence and verbal abuse in his marriage and also that there were sustained allegations of sexual abuse of the minor that required him to complete sexual abuse counseling, which he found to be beneficial. Father testified he understood the court's finding to be that he violated the minor's privacy. He admitted he was present when the minor was trying on a new bra, and that he went into the bathroom when the minor was using the toilet, stating he did so to wash his eyes due to his "severe medications, allergies" and he did not see her body because she was wearing a long skirt. He testified these acts were wrong because they "violated [the minor's] privacy." He also acknowledged he "assist[ed the minor] in the shower washing her," stating it was not acceptable for him to assist the minor "at 11 years old." He claimed he walked into the bathroom when the minor was in the shower because he thought she was drowning or choking, but he had no memory of touching the minor's private parts.

#### ***Juvenile Court's July 26, 2017, Initial Ruling***

On July 26, 2017, the juvenile court ordered all the children, except the minor, returned to the parents. As for the minor, the court ordered further proceedings to provide "additional information" to determine whether returning the minor to her parents' care and custody would create a substantial risk of detriment to her safety and well-being.

### ***Addendum Report filed August 15, 2017***

According to the addendum report, the social worker attended a meeting between the minor, Pettingill, other service providers, and mother to discuss, among other things, the minor's feelings on returning to the family home. When asked whether she wanted to return home to her parents and siblings, the minor stated she did not want to talk about it and did not have an answer. Eventually, she agreed to visits, followed by check-ins to determine whether more visits were appropriate.

She had her first supervised visit with father on August 12, 2017. For the first 20 minutes, the minor did not make eye contact with father. Thereafter, she looked at pictures with father and laughed. The minor allowed father to hug her at the end of the visit. She later reported the visit was "fine" but said she did not know if she wanted another visit. When asked if she would like to attend if a visit was scheduled twice a week, the minor gave a nervous look and would not answer, nor would she answer when asked about visits once a week.

The minor stated she would prefer that her siblings and mother be present during visits and agreed to a family visit once a week, but requested that the next visit not occur until the following week. The social worker noted visits would remain supervised until the Department determined the minor was comfortable having unsupervised visits with father. In light of these discussions with the minor, the Department continued its recommendation that the parents' reunification services be terminated, noting it was uncertain when or if the minor could be returned home without further trauma given that the minor did not appear ready to return to the family home and was not comfortable visiting with father unless mother and her siblings were present.

### ***September 6, 2017, Progress Report***

The progress report stated the minor indicated she wanted to meet with father and wanted to make sure all of her siblings were also present. The August 19, 2017, visit with both parents and the minor's siblings reportedly "went well." The minor hugged

both parents and her siblings and said she could not wait to go home. The minor visited with both parents again on August 22, 2017. She hugged both parents. When father asked if they could pray before eating, the minor grabbed mother's hand to pray but shook her head when father reached for her hand. The minor asked her parents for a cell phone and was offered an electronic tablet instead.

The minor visited with her parents again on August 26, 2017. Although they laughed and talked together, the minor was upset she did not yet have her tablet. She asked the social worker if father could "come more often, I really want him to come more often." At an August 29, 2017, visit, the minor hugged both parents. The parents gave her the discussed tablet. The minor was happy and requested that father be permitted to attend the next visit with mother to celebrate the minor's birthday. She kissed and hugged both parents at the end of the visit.

#### ***Juvenile Court's Ruling as to the Minor***

On September 11, 2017, based on "the Court's review of the reports, [the] extensive contested hearing and all of the evidence received there, and based on the information in the progress report," the juvenile court found "by a preponderance of the evidence that it would be detrimental for [the minor] to return home at this point in time." In that regard, the court stated as follows:

"The reason for that is that [the minor] has had some visits with family. Those visits have gone well and that they have—they reflect, I think, a progression in how [the minor] is doing. But the Court's concern is that [the minor] expresses some—[the minor] is not as communicative about her thoughts and feels as one might hope, and that indicates for the Court that there may be—[the minor] may have thoughts that cause her to have uncertainty about what's best for her in that near-term future.

"With it being a permanency hearing, and in particular an eight-month [sic] permanency hearing, the time for further reunification services has run out. But with that said, the way the statute is written the Court would be inclined to find by clear and

convincing evidence that it would be not in [the minor's] best interest to schedule a selection and implementation hearing but rather for the Court to designate a—to select a permanent plan.”

After hearing argument from all parties, the court reiterated its ruling as follows: “On the issue of return home, the Court does find that the Department has shown by preponderance of the evidence that there would be substantial risk of detriment to [the minor's] safety and well-being if she were to be returned home at this particular point in time. And that's for the reasons that the Court stated earlier.”

The court ordered the minor remain in out-of-home placement with a permanent plan of returning home. The court further ordered continued individual counseling for the minor and conjoint counseling between the minor and mother, giving the Department discretion to include father in conjoint counseling upon a determination by the minor's therapist that conjoint counseling would be appropriate and would not jeopardize the minor's status. The court also ordered that the minor undergo a psychological evaluation to determine any diagnosis and appropriate treatment options and adopted the Department's proposed findings and orders subject to the court's modifications.

Both parents filed timely notices of appeal.

## **II. DISCUSSION**

The parents contend there was insufficient evidence to support the juvenile court's finding that return of the minor to their custody would create a substantial risk of detriment to the minor's safety, protection, or physical or emotional well-being within the meaning of sections 366.21, subdivision (f), and 366.22, subdivision (a).

The permanency hearing “shall be held no later than 12 months after the date the child entered foster care.” (§ 366.21, subd. (f)(1).) “After considering the relevant and admissible evidence, the court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a

substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment.”

(*Ibid.*) The same rule applies at the 18-month permanency review hearing when, as here, a case has been continued pursuant to section 366.21, subdivision (g)(1) or (2).

(§ 366.22, subd. (a)(1).)

“The failure of the parent . . . to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker’s report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent . . . and the extent to which he or she availed himself or herself of services provided, . . . and shall make appropriate findings pursuant to subdivision (a) of Section 366.” (§ 366.22, subd. (a)(1).) “[W]hile the court must consider the extent the parent has cooperated with the services provided and the efforts the parent has made to correct the problems which gave rise to the dependency (§ 366.22, subd. (a)), the decision whether to return the child to parental custody depends on the effect that action would have on the physical or emotional well-being of the child. [Citation.]” (*In re Joseph B.* (1996) 42 Cal.App.4th 890, 899.)

“In reviewing the sufficiency of the evidence on appeal, *we look to the entire record to determine whether there is substantial evidence to support the findings of the juvenile court.* We do not pass judgment on the credibility of witnesses, attempt to resolve conflicts in the evidence, or determine where the weight of the evidence lies. Rather, we draw all reasonable inferences in support of the findings, view the record in the light most favorable to the juvenile court’s order, and affirm the order even if there is other evidence that would support a contrary finding. [Citation.] When the [juvenile] court makes findings by the elevated standard of clear and convincing evidence, the substantial evidence test remains the standard of review on appeal. [Citation.] The

appellant has the burden of showing that *there is no evidence* of a sufficiently substantial nature to support the order. [Citations.]” (*In re Cole C.* (2009) 174 Cal.App.4th 900, 915-916, italics added.)

We conclude there is substantial evidence to support the juvenile court’s finding of detriment. The record, viewed in the light most favorable to the court’s findings, shows that the parents’ continuing denial of the sustained allegations of sexual abuse of the minor, coupled with the minor’s tentative and still fragile level of comfort regarding interactions with father, would have a detrimental effect on the minor’s physical or emotional well-being if returned to the parents’ custody and care.

The allegations of sexual abuse of the minor by father were sustained by the juvenile court on January 22, 2016. Nonetheless, from that point forward and throughout the pendency of the proceedings, both parents remained steadfast in their denial of the sexual abuse allegations. Father denied any sexual abuse whatsoever, characterizing the court’s ruling sustaining the sexual abuse allegations to mean the court found he did nothing more than violate the minor’s privacy. His denial of any sexual abuse was attested to by various social workers and service providers. Father’s continued denial of the nature and extent of his sexual abuse of the minor despite having participated in and completed services is sufficient in and of itself to support the court’s finding of detriment if the minor were returned to the parents’ care and custody.

The court’s finding of detriment is further supported by evidence of the minor’s emotional state over the course of the dependency. In July 2016, the minor requested that visitation with father end. For the next year, she continued to refuse visitation with father. In a June 7, 2017, supervised telephone call, the minor told mother to “ ‘tell the social worker I’ll do whatever I can to come home, I miss my family, dad too.’ ” However, when the social worker asked the minor about the statement and if the minor would like to visit father, the minor immediately stopped communication, would not answer, and refused to make eye contact. The social worker got the same response when

she asked the minor where she would like to be placed after the Children's Receiving Home. Eventually, the minor indicated she would rather remain at the Children's Receiving Home than be placed in foster care. The social worker noted the minor was exhibiting behaviors associated with someone who had been the victim of sexual abuse, such as shutting down when asked about the allegations, wetting the bed and urinating on herself, as well as rubbing action figures against her genitals.

In August 2017, the minor agreed to supervised visits with father. She eventually warmed up to father after the first visit; however, she was unsure if she was up for another visit and wanted the next visit delayed until the following week, as a visit that same week was "too soon." She also wanted her mother and all of her siblings present during visits. While the final progress report on September 6, 2017, noted the minor's visits with her parents and siblings "went well," the minor was still hesitant to hold her father's hand during prayer. After the parents offered the minor a tablet, she expressed interest in having father visit more often and became comfortable hugging both parents at the end of the visit. Once the minor received the tablet, she requested that father be permitted to attend the next visit with mother to celebrate the minor's birthday. Nonetheless, the minor never wavered in her reluctance to visit with father unsupervised or without mother and her siblings present.

The record makes plain that both parents participated in and completed services but remained steadfast in their denial of the sustained allegations of sexual abuse, as well as much of the alleged physical abuse and domestic violence. That, coupled with the fact that the minor was only beginning to become comfortable with short weekly supervised visits with father, she insisted that mother and the other children be present during visits, she was at times reluctant if not entirely opposed to speaking about having contact with father, she had been and was continuing to exhibit behaviors associated with being a victim of sexual abuse, and some of her past and present behaviors (e.g., hallucinations, screaming in the shower, and stealing from her foster family) suggested mental health

issues, placed into serious question whether return of the minor to the parents' care and custody would negatively affect the minor's physical and emotional well-being. (*In re Joseph B.*, *supra*, 42 Cal.App.4th at p. 899.)

Father contends the juvenile court did not explicitly find detriment pursuant to section 366.22, subdivision (a), and failed to cite a factual basis to support its finding of detriment. In particular, he contends the court's request for additional information implied that it had insufficient evidence at that time to make a finding of detriment, and the additional information provided by the Department did not rectify the insufficiency. As we explain, father's claims are belied by the record.

The court's initial written ruling dated July 25, 2017, stated the minor's "situation differs from that of the other children in at least two respects—there are allegations of sexual abuse (allegedly committed by Father) unique to her, and she has not been visiting with Father." The ruling described the allegations of sexual abuse and the minor's mental health challenges, and discussed various statements made by the minor regarding her desire, or lack thereof, to see and visit father. The court requested "additional information to determine whether returning [the minor] to her parents' care and custody at this time would create a substantial risk of detriment to her safety and well-being," and ordered the Department to evaluate the circumstances more closely and provide a written report with any additional findings and recommendations.

In response to the court's July 25, 2017, ruling, the Department prepared an addendum report stating the minor refused to discuss with anyone, including her therapist and her mother, whether she wanted to return home to her parents and siblings. Eventually, the minor agreed to unsupervised visits, followed by check-ins to determine whether more visits were appropriate. Over the course of the next month, the minor visited with her parents and siblings five times, as we have described above.

As we have also set forth above, at the time of the juvenile court's September 11, 2017, ruling, it observed that despite several visits and some progress, the minor was not

ready to return home. It informed the parties that, for those reasons and based on “the Court’s review of the reports, . . . our extensive contested hearing and all of the evidence received there, and . . . the information in the progress report,” the court intended to find “by a preponderance of the evidence that it would be detrimental for [the minor] to return home at this point in time.”

After hearing argument from all parties, the court explicitly found that, “[o]n the issue of return home, the Court does find that the Department has shown by preponderance of the evidence that there would be substantial risk of detriment to [the minor’s] safety and well-being if she were to be returned home at this particular point in time.” In stating its reasons, the court incorporated its earlier stated reasons, to wit, uncertainty as to the minor’s thoughts and feelings regarding future visitation and the possibility of returning home to her parents, as well as all the documentary and testimonial evidence previously presented.

Father asserts that both he and mother actively participated in and completed their services and benefited from those services such that the court acknowledged such progress and found that, despite the parents’ denial of some of the allegations, return of the minor’s siblings was appropriate. However, the portions of the court’s ruling to which father cites refer specifically to the minor’s siblings and not to the minor whose situation, as the court specifically noted, “differs from that of the other children.”

The evidence the court relied on in finding detriment as to the minor contained significant information regarding the parents’ denial of portions of the domestic violence and physical abuse allegations, but also their unwavering denial of all of the sexual abuse allegations which applied only to the minor. The evidence also includes the opinion of the minor’s therapist regarding the negative impact those denials would likely have on the minor if she were returned to her parents’ care and custody, as well as the testimony from the social worker regarding the minor’s reluctance to visit with father or talk about the allegations, and that of father’s therapist, who was concerned about returning a child

home without conjoint counseling after nearly a year of no contact. As previously discussed, that evidence is sufficient to support the court's finding of detriment.

While denying any intent to relitigate the facts of the sustained allegations of sexual abuse, father nonetheless asserts those allegations "are questionable." He urges us to consider his version of the events underlying the allegations and reach the conclusion that his actions were akin to those "within the scope of normal caretaker responsibilities," and there was no evidence he acted for purposes of sexual arousal or gratification. We decline to do so. As the Department aptly notes, father's challenge to the court's true finding as to the sexual abuse allegations is not properly before this court. In any event, father's attempt to reshape the characterization of his actions is further evidence of his denial of the sustained allegations and, given the uncertainty of the minor's willingness and ability to have sustained contact with father, such denial bears directly on the question of whether to return the minor to parental custody and the effect that action would have on the physical or emotional well-being of the minor. (*In re Joseph B.*, *supra*, 42 Cal.App.4th at p. 899.)

Finally, father contends the court failed to adequately explain how return of the minor to her parents' care and custody would be detrimental to her. Acknowledging that we may infer such a finding (see *In re S.G.* (2003) 112 Cal.App.4th 1254, 1260 [the "pertinent rule of appellate review" is that the appellate court "will infer a necessary finding provided the implicit finding is supported by substantial evidence"]; *In re Corienna G.* (1989) 213 Cal.App.3d 73, 83 [permanency planning order finding implied]), father claims we should not do so because the evidence was insufficient, particularly in light of his substantial compliance with his case plan, the absence of a warning from any of the therapists involved in the case that harm would befall the minor if she were returned to her parents' care and custody, and the dearth of evidence showing contact with father was detrimental to the minor. We disagree.

The record makes plain that, based on its review of the reports, the “extensive contested hearing and all of the evidence received there,” and on the information in the progress report, the court expressly found by a preponderance of evidence that it would be detrimental to return the minor to the parents’ care and custody and ordered out-of-home placement with a permanent plan of returning home. That evidence included over a year’s worth of reports as well as the testimony and statements of social workers, service providers, the parents, the minor, and some of the minor’s siblings. The August 15, 2017, addendum report and the September 6, 2017, progress report, provided at the court’s request, detailed recent visits between the minor and her family and provided insight into the minor’s statements and behaviors during and around those visits.

The therapists involved in the case expressed concern regarding return of a minor to a parent where that parent continued to deny sexual allegations found true by a court, and regarding contact between the minor and father, even in a therapeutic setting, before it was clear the minor was emotionally prepared to do so. While the August 15, 2017, and September 6, 2017, reports provided some evidence that the minor was potentially becoming more comfortable with limited contact with father, those reports also made clear that such progress had only occurred over a brief period of time (less than two months after the July 2017 initial ruling) and was tenuous at best, particularly given that the minor was adamant that visits include mother and the minor’s siblings and encouraged to attend by promises of gifts such as the tablet she, in fact, received during a visit.

The totality of the evidence provides an ample basis to support the court’s finding of detriment.

### III. DISPOSITION

The juvenile court's order is affirmed.

/S/

---

RENNER, J.

We concur:

/S/

---

DUARTE, Acting P. J.

/S/

---

HOCH, J.